

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
IN KANSAS CITY**

STATE OF MISSOURI, ex rel.)	
JEREMIAH W. (JAY) NIXON,)	
Attorney General,)	
Plaintiff,)	
)	
v.)	Case No.
ALYON TECHNOLOGIES, INC.)	
1 Harmon Plaza)	
Second Floor)	Division
Secaucus, New Jersey 07094)	
Serve:)	
Stephane Touboul)	
1 Harmon Plaza, 2 nd Floor)	
Secaucus, New Jersey 07094)	
)	
AND)	
)	
TELCOLLECT, INC.)	
3100 Medlock Bridge Road #140)	
Norcross, Georgia 30071)	
Serve:)	
Joseph D. Doherty, President)	
3100 Medlock Bridge Road #140)	
Norcross, Georgia 30071)	
)	
AND)	
)	
STEPHANE TOUBOUL)	
1723 New Central Avenue)	
Lakewood, New Jersey 08701)	
OR 1 Harmon Plaza, 2 nd Floor)	
Secaucus, New Jersey 07094)	
)	
Defendants.)	

PETITION FOR INJUNCTIVE RELIEF, JUDGMENT FOR RESTITUTION, COSTS AND CIVIL PENALTIES

COMES NOW the State of Missouri as Plaintiff in this action, by and through its Attorney General Jeremiah W. (Jay) Nixon. The Attorney General brings this action through his Assistant Attorneys General. In support of its petition, the plaintiff states as follows:

PARTIES AND JURISDICTION

1. Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to §§407.020 and 407.100 RSMo 2000.

2. Defendant Alyon Technologies, Inc. (“Alyon”) is a Delaware corporation with its office and principal place of business at 1 Harmon Plaza, Second Floor, Secaucus, New Jersey 07094. Defendant Alyon Technologies, Inc., transacts or has transacted business in the State of Missouri, and in Jackson County.

3. Defendant Stephane Touboul, individually and as the Chief Operating Officer and sole shareholder of Defendant Alyon Technologies, Inc., who at all relevant times lived at 1723 New Central Avenue, Lakewood, New Jersey 08701, and all relevant times material to this complaint, acting alone or in concert with others, has formulated, directed, controlled, or participated in the acts and practices of Defendant Alyon Technologies, Inc. as set forth in this complaint. Defendant Touboul transacts or has transacted business in the State of Missouri, and in Jackson County.

4. Defendant TelCollect, Inc. (“TelCollect”) is a New York corporation with its office and principal place of business at 3100 Medlock Bridge Road #140, Norcross, Georgia 30071-1429. Defendant TelCollect, Inc., transacts or has transacted business in the State of Missouri, and in Jackson County.

5. This Court has subject matter jurisdiction over this action pursuant to §407.100 RSMo 2000, which allows the Attorney General to seek injunctive relief, restitution, and penalties in circuit court for violations of §407.020.

6. Venue is proper in this Court pursuant to §407.100.7 RSMo 2000, because acts which are alleged to violate the Missouri Merchandising Practices Act described below occurred, among other places, in Jackson County, Missouri.

7. This Court has jurisdiction over the defendants pursuant to §506.500 RSMo 2000 because, as is set forth more fully herein, they have transacted business in the State of Missouri, and/or have entered into contracts within the state, and/or have committed tortious acts within the state.

THE MISSOURI MERCHANDISING PRACTICES ACT

8. Section 407.020, RSMo 2000 provides, in pertinent part:

The act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in Section

407.453, in or from the State of Missouri, is declared to be an unlawful practice.

9. Section 407.100 RSMo 2000, provides:

1. Whenever it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

4. The court in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including but not limited to, any moneys or property, real or personal, which may have been acquired by means of any

method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

5. The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this section or to insure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

7. Any action under this section may be brought in the county in which the defendant resides, where the violation alleged to have been committed occurred, or where the defendant has his principal place of business.

10. "Advertisement" is defined by §407.010(1) as "the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise."

11. "Merchandise" is defined by §407.010(4) as "any objects, wares, goods, commodities, intangibles, real estate or services."

12. "Sale" is defined by §407.010(6) as "any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or credit."

13. "Trade or Commerce" is defined by §407.010(7) as "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real personal, or mixed and any other article, commodity, or thing of value wherever situated. The terms 'trade' and 'commerce' include any trade or commerce directly or indirectly affecting the people of this state."

FACTS AND VIOLATIONS

14. Defendant Alyon Technologies, Inc. is a Delaware corporation with its office and principal place of business at 1 Harmon Plaza, Second Floor, Secaucus, New Jersey 07094. Defendant Stephane Touboul is the Chief Operating Officer and sole shareholder of Defendant Alyon Technologies, Inc. who at all relevant times lived at 1723 New Central Avenue, Lakewood, New Jersey 08701. At all relevant times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of Defendant Alyon Technologies, Inc. set forth in this complaint. Defendant TelCollect, Inc. is a New York corporation with its office and principal place of business at 3100 Medlock Bridge Road #140, Norcross, Georgia 30071-1429. Defendant Alyon Technologies, Inc., Defendant Touboul, and Defendant TelCollect, Inc., transact or have transacted business in the State of Missouri, and in Jackson County.

15. Defendants Alyon Technologies, Inc., TelCollect, Inc., and Touboul, alone or in concert with other unnamed persons or entities, provide or have provided a billing system (hereafter referred to as “Alyon billing system”) to service vendors that permits the vendors to charge Missouri consumers whose telephone lines were allegedly used to access the vendors’ visual and/or audio information and entertainment services offered over the Internet through individual World Wide Web sites. The Alyon billing system is touted as an alternative method of payment for Missouri consumers who do not wish to place such charges on their credit cards.

16. To use the Alyon billing system, consumers must download on their computer a modem-dialing software program offered through the service vendors’ websites.

17. Defendant Alyon Technologies, Inc. subcontracts with Defendant TelCollect, Inc., to provide billing services and customer service.

18. The material terms of service, including the cost and the method by which consumers will be billed, are often not clearly and conspicuously disclosed. To accept the terms of service, Missouri consumers need only to click “I Accept.”

19. Defendants represent that after Missouri consumers click “I Accept,” they must click “Connect.” Then, the dialing program disconnects the consumer’s modem from the consumer’s normal Internet Service Provider (“ISP”) and reconnects the consumer’s modem to the Internet through a telephone connection to Alyon’s network.

The consumer may then access the service vendor's visual and/or audio information and entertainment services. The Missouri consumer is charged \$4.99 for each minute the consumer is connected to the Internet via Alyon's network.

20. In numerous instances, consumers complain that the dialing program is downloaded to a Missouri consumer's computer without the knowledge or consent of the line subscriber whose telephone line is connected to the computer. In those instances, the dialing program still disconnects the line subscriber's modem from the line subscriber's normal ISP and reconnects to the Internet through Alyon's network via a telephone connection terminating in a state.

21. Defendants make no attempt to determine whether the consumer they are billing voluntarily downloaded the dialing program, or viewed the vendor's visual and/or audio information and entertainment services, or authorized anyone else to do so from the consumer's computer connection.

22. Since at least June 2002, the Defendants, either themselves or by using the services of other agents, have mailed bills directly to the Missouri consumers whose telephone lines purportedly were used to access vendors' services through the Alyon billing system. The Defendants initially send to Missouri consumers bills that list Alyon's name at the top of the bill, with an address in Norcross, Georgia, to which consumers are instructed to return their payments. These bills also list a toll-free number

for Missouri consumers to call if they have any questions about the bill, and a website for customer service.

23. Some bills are sent to Missouri consumers with a “due date” less than two weeks from the date of the invoice. In numerous instances, Missouri consumers do not receive their first bill until three or four days before payment is due.

24. The Defendants in numerous instances, after receiving written notices of billing errors from Missouri consumers, do not forgive the charges, nor do they conduct a reasonable investigation into the validity of the charges and/or notify the consumers of why they are sustaining the charges. Instead, Defendants simply subject complainants to additional billing and collection efforts, and in some instances directly or indirectly threaten to adversely affect a complainant’s credit history.

25. In most cases, Missouri consumers who do not pay after receiving their first bill receive a second bill. Defendants mail the second bill less than thirty days from the invoice date of the first bill. The second bill states in bold type that payment is necessary to prevent collection activity against the Missouri consumer.

26. Many Missouri consumers who have received the Defendants’ bills do not know what they are being billed for. Consumers complain that in many instances, neither the consumer nor anyone in the consumer’s household has ever accessed Alyon’s vendors’ services on the Internet, used their computer modem to make such a call, or has ever authorized any person to do so from the consumer’s computer. In some instances,

the Missouri consumer does not even own a computer to access the Internet. In other instances, a consumer has discovered that a minor in the household, or another person who does not have the consumer's authorization, has accessed the entertainment services using the Alyon billing system.

27. Missouri consumers who have called Defendants' toll-free number to inquire or complain about the charges that appear on the bills find it virtually impossible to reach a customer representative of the Defendants. Consumers report calling numerous times throughout a number of days, without ever receiving an answer. When Defendants' representatives are contacted they represent that Missouri consumers, as line subscribers, are responsible for the charges made over their telephone lines, regardless of the explanation.

28. In some instances, the Defendants bill Missouri consumers when a minor has accessed a vendor's website without the consumer's permission. In such instances, Defendants, through their representatives, represents to consumers that they are still liable for payment to Defendants of those charges.

29. Defendants offer to reduce the amount owed when a minor has accessed a vendor's website without the consumer's permission, but only if a consumer provides an affidavit and copy of the minor's birth certificate. In some other instances, the Defendants, through their representatives and their website, represent to consumers that

they must provide an affidavit and proof from their telephone exchange carrier that no call was made to Alyon's servers before the Defendants will remove the charges.

30. Before, during, after and in connection with the marketing, offering, advertising, and/or selling of a billing system to service vendors of visual and/or audio information and entertainment services offered over the Internet through individual World Wide Web sites, the Defendants, personally and through their officers, owners, directors, agents, employees and representatives have engaged in deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of material facts, all declared to be unlawful under §407.020 RSMo 2000, in the following respects, among others:

(A) Misrepresenting that services for visual and/or audio information and entertainment offered over the Internet were provided through the consumers' telephone lines using Defendants' dialing program, when in fact those services were not provided; and

(B) Misrepresenting to Missouri consumers that Defendants' dialing programs are downloaded onto consumer's computers with their authorization, when in fact the consumers' did not authorize the download; and

(C) Engaging in the unfair practice of violating federal law intended to protect the public, specifically Section 18(d)(3) of the FTC Act and Sections 201(a)(8) and (c) of the Telephone Disclosure and Dispute Resolution Act, 15 U.S.C. §§

57a(d)(3) and 5711(a)(8) and (c), which state that a violation of the Pay-Per-Call Rule constitutes an unfair or deceptive practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

(D) Engaging in the unfair practice of attempting to enforce contracts that are illegal pursuant to §431.055 RSMo., and in addition, misrepresenting to consumers that such illegal contracts are enforceable.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General prays this Court for the following relief:

A. A judgment finding that the Defendants have violated §407.020 RSMo 2000, as aforesaid;

B. Preliminary and permanent injunctions, pursuant to §407.100.1 RSMo 2000, enjoining the Defendants Alyon Technologies, Inc., TelCollect, Inc., and Stephane Touboul, and their officers, directors, owners, agents, employees, representatives, attorneys, assigns, and all those acting for them in whatever capacity from:

1. Violating § 407.020, RSMo 2000 by the act, use or employment of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale or advertisement of any merchandise, including but not limited to, the conduct alleged herein.

2. Preliminary and permanent injunctions enjoining Defendants from the marketing, advertising, offering, selling and/or promoting, by any means, a billing system to service vendors that offer services over the Internet through individual World Wide Web sites in the State of Missouri unless and until such time as they post a bond or letter of credit in the amount of \$50,000.00 as security against any future claim that Defendant(s) have violated the Act, and which shall be due and payable upon presentment of a judgment entered against Defendant(s) for violating the Act.

C. An Order directing the Defendants to pay to the State of Missouri an award of restitution, pursuant to § 407.100.4 RSMo 2000 on behalf of all Missouri consumers who have been injured by the above alleged violations with an additional amount to be paid into the state treasury for the benefit of the Merchandising Practices Revolving Fund as provided in §407.140.1 RSMo 2000.

D. An Order requiring the Defendants to pay all court costs incurred in this action and all costs of investigation and prosecution of this action, including a reasonable attorney's fee incurred by the Attorney General's Office, as provided for by §407.130 RSMo 2000.

E. Civil penalties in the amount of \$1,000.00 for each violation of §407.020 RSMo, as provided in §407.100.6 RSMo;

F. Such further relief as the Court deems just and proper.

Respectfully submitted,
JEREMIAH W. (JAY) NIXON
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